 Internal Case Management System Worksheet - Case Closing					Top Allegation USE OF FORCE - LEVEL 2	Group G54-GROUP 54 - FORCE Date of This Report 01/31/2019	
Date Reported 12/28/2017	Date Assigned 12/28/2017	IAB Log No. 2017-51460	Case No. (G54) C-2018-12	Folder Type CORRUPTION	Preliminary Case Type FORCE INVESTIGATION	Follow-Up No.	Worksheet Tracking No. 3523724

Topic/Subject (Case Closing) CASE CLOSING (SUBSTANTIATED)	Activity Date 01/31/2019	Activity Time 13:00
---	------------------------------------	-------------------------------

Referred to Group -	Conferred With	Next Review Date
-------------------------------	-----------------------	-------------------------

Closing Statement

Case #:
C-2018-0012

Log #:
2017-51460
2018-48923

Subject Officer:
Police Officer, Timothy Burke, Tax # 954584, 52nd Precinct
Date of Appointment: July 9, 2013
Probation (at time of incident): No
Current Duty Status: Active/Full Duty,

Sergeant, Aneudy Rosa, Tax # 931950, 52nd Precinct
Date of Appointment: July 22, 2002
Probation (at time of incident): No
Current Duty Status: Active/Full Duty,

Date Case Received:
January 2, 2018

Date of Occurrence:
December 28, 2017

Administrative Statute of Limitations:
June 28, 2019

Classification:
C-1

Investigator:
Lieutenant Steven Alfano, Tax # 921911

Team Leader:
Deputy Inspector Michael Parente, Tax # 905618

Overall Case Disposition:
Substantiated

Details:
Log # 2017-51460
On Thursday, December 28, 2017 the Command Center received a telephone complaint from the Desk Officer of the 52nd Precinct Sgt. Rosa, Aneudy Tax # 931950. Sgt. Rosa stated that PO Timothy Burke Tax:954584 was injured by perpetrator [REDACTED] who was in custody within the 052 prisoner cells, [REDACTED] and was released from a nearby [REDACTED] center prior to being arrested. [REDACTED] was yelling, doing push-ups, and causing ruckus within the cell making the other cell-mates uncomfortable. PO Burke shadowed by another UMOS asked [REDACTED] to exit the cell so that he could be relocated to his own cell. [REDACTED] refused to exit the cell and grabbed PO Burke by the throat and then struck him about the face with a closed fist causing redness and some swelling. PO Burke defended himself by striking [REDACTED] about the left side of his face also with a closed fist causing redness and some swelling. [REDACTED] was removed to a single cell where he proceeded to smack his head against the cell wall. PO Burke also suffered [REDACTED] to his left cheek. PO Burke was removed to North Central

Bronx Hospital and [REDACTED] was removed to St. Barnabas Hospital. Callout # 2017-51460 was conducted by investigators from Group 54.

Log # 2018-48923

On Friday, Dec. 14, 2018 Charges and Specifications were preferred against PO Timothy Burke, tax #954584, assigned to the 52 precinct. The Charges are Specifications were preferred by Deputy Inspector Parente, under the authority of Assistant Chief O'Neil with Department Advocate Richardson. The charges are as follows:

1 Said Police Officer Timothy Burke, while assigned to the 52nd Precinct, on or about December 28, 2017, while in Bronx County, failed to utilize de-escalation techniques and apply the reasonable force necessary to subdue a prisoner, to wit: said Police Officer struck [REDACTED] nine (9) times with a closed fist.

P.G. 221-02 Page 1, Sub 2 Tactic Operations - Use of Force

P.G. 221-02 Page 2, Sub 11

2 Said Police Officer Timothy Burke, while assigned to the 52nd Precinct, on or about January 2, 2018, while in Bronx County, intentionally made an official, false statement; to wit: said Police Officer filed a false and misleading, sworn affidavit with the Bronx District Attorney's Office.

203-08 General Regulations - Making False Statements

3 Said Police Officer Timothy Burke, while assigned to the 52nd Precinct, on or about December 28, 2017, while in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer stated in sum and substance to a Bronx ADA known the Department, next time I will just put him in a coma. It's the only way I will get justice.

203-10, Page 1 Sub 5 Public Contact - Prohibited Contact

4 Said Police Officer Timothy Burke, while assigned to the 52nd Precinct, on or about and between December 28, 2017 and January 2, 2018, while in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer knowingly provided false statements to a Department employee knowing that said employee would rely on said statements to provide a sworn, official affidavit.

203-10, Page 1 Sub 5 Public Contact - Prohibited Contact .

On January 31, 2019 the Charges & Specifications were subsequently amended by the DAO with a change to spec # 1 which now states [REDACTED] said Police Officer Timothy Burke, while assigned to the 52nd Precinct, on or about December 28, 2017, while on-duty and in Bronx County, used excessive force against [REDACTED] in that he wrongfully struck [REDACTED] multiple times. [REDACTED]

Identification and Interview of Complainant:

The complainant [REDACTED] known to the Department under NYSID # [REDACTED] Male/Hispanic/20, who resides at [REDACTED] was interviewed by investigators on Friday, December 29, 2017, at 0135 hours, while at St. Barnabas Hospital.

[REDACTED] stated that he couldn't remember too many details of the incident and he doesn't remember why he was arrested and brought to the 52 precinct. [REDACTED] stated that he was not intoxicated nor on any type of drugs. [REDACTED] stated he is only 20 years old and is not able to drink in this country. [REDACTED] stated that while inside the cells he had an interaction with an officer who was light skinned and husky with black hair. [REDACTED] stated that the officer put him in the cell and punched him one time in the left side of the face for no reason. [REDACTED] stated that he pushed the officer one time as well. [REDACTED] stated the officer didn't say anything to him before he punched him. [REDACTED] stated that no officer ever placed a hand on his throat or neck area. [REDACTED] stated that he was not punched or kicked any more after that.

Identification and Interview of Witness(es):

The witness [REDACTED] known to the department under NYSID # [REDACTED] Male/Black/24 who resides at [REDACTED] was interviewed by investigators on Friday December 29, 2017.

[REDACTED] who was a prisoner in the cells stated that a male Hispanic approximately 19 years old ([REDACTED]) had a fight with another cellmate and was removed from the cell. [REDACTED] stated that [REDACTED] was brought back into the cell and started to yell, spit and threw bottles at the Officers. [REDACTED] stated that [REDACTED] continued to argue with the Officers and the Officers took [REDACTED] out of the cell for a second time and saw two (2) to three (3) officers strike him. [REDACTED] stated that he could not tell exactly what was going on but [REDACTED]'s face was bloody. [REDACTED] states that he did not see [REDACTED] hit any of the officers but he also stated that he probably did. [REDACTED] stated that the Officers pretended they were putting handcuffs on him and continued to punch him in the face. [REDACTED] stated that it looked as if the Officer was choking [REDACTED]

The witness [REDACTED] known to the department under NYSID # [REDACTED] Male/Black-Hispanic/22 who resides at [REDACTED] was interviewed by investigators on Tuesday, February 6, 2018.

[REDACTED] who was a prisoner in the cells area stated that he witnessed the complainant [REDACTED] drunk while arguing (calling a male white Officer a "Nigger"). [REDACTED] stated that [REDACTED] spit on the Officer and swung his fist (in a punching motion) that did not connect with the Officer's face. [REDACTED] stated that the white Officer grabbed [REDACTED] by the top of the shirt and punched him 4-6 times while not giving any verbal commands. [REDACTED] stated that other Officers arrived soon after and handcuffed [REDACTED] [REDACTED] stated that he did not see anyone punch strike or kick

██████████ while handcuffed. ██████████ stated that he did not see any injuries on the Officer however he saw that ██████████'s eye was swollen.

The witness ██████████ known to the department under NYSID # ██████████ Male/Black 39 who resides at ██████████ was interviewed by investigators on Tuesday, February 6, 2018.

██████████ who was a prisoner in the cell area stated that he witnessed an Officer tell ██████████ to "Stop shaking" and ██████████ began choking the Officer by the throat then stated "Do you want to fight" and then the Officer pushed ██████████'s hand down and punched him in the face one (1) time. ██████████ stated that a female Officer then put ██████████ in handcuffs and he did not see what happened after that. ██████████ stated that the Officer was defending himself. ██████████ stated that once ██████████ was handcuffed, no more force was used.

Canvass:

Prisoner holding cells video was recovered which showed the following:

During ██████████ time in the cells he is observed doing push-ups on cell bars and shadow boxing. Police Officer Burke is observed taking ██████████ out of the cell in an apparent attempt to move him to a different holding cell area. While outside the cells, ██████████ and PO Burke are observed in a verbal exchange. PO Burke grabs ██████████ by the right shoulder at which time ██████████ swipes away utilizing his right arm and the interaction then becomes physical. ██████████ is observed holding onto PO Burke's jacket below the neck area. PO Burke is observed pushing ██████████ in the corner of the cell area at which time he is observed striking ██████████ with a closed fist in the face a total of nine (9) times. With the assistance of officers present, ██████████ is brought to the ground and handcuffed without further incident. PO Burke is observed leaving the cell area after ██████████ is handcuffed. ██████████ is then brought to a separate holding cell area, also without incident. At no time during the video is ██████████ observed striking PO Burke with a closed fist.

Identification of Subject Officer:

The subject officer PO Timothy Burke was identified through IAB Log # 2017-51460 by Sgt Aneudy Rosa, video surveillance in the cells and the witness officers that were present during the incident.

The Deponent is informed by PO Timothy Burke of 52 PCT, shield 17244, that at above time and place, as informant attempted to transfer defendant between holding cells, defendant lunged towards informant, and struck informant about the right side of the mouth twice with a closed fist. Deponent is further informed by informant, the defendant placed his hands around informants throat and began to squeeze.

Deponent is further informed by informant, the defendants aforementioned conduct caused informant to suffer, substantial pain and soreness to his mouth, substantial pain and soreness to his hands, and a twisted right ankle. Deponent is further informed by informant, that informant was treated at a local Bronx Hospital.

>Arrest Affidavit signed by PO Burke on January 2, 2018 stated the following:

I PO Timothy Burke of the 52nd Pct, Shield # 17244 say that I have read the complaint filed in the above-entitled action and attached hereto and that the facts stated in that complaint to be on information furnished by me are true upon my personal knowledge.

>TRI Report # 2017-052-000228 - The TRI report prepared by Sgt Rosa for PO Burke stated that physical force was used against the officer while the officer attempted to apprehend and control defendant ██████████. Defendant did use force against the Officer by choking, striking, pushing and shoving the Officer. The MOS involved at this point used force by striking the defendant in order to take the defendant down in defense of himself and to prevent further injury to both parties involved. MOS did sustained pain while attempting to overcome resistance. Defendant sustained minor swelling which resulted in him requiring treatment at the Hospital. In addition the defendant was banging his head on the walls in the cells.

>Prisoner Roster - [REDACTED] is not properly listed on the prisoner roster when returned back to the 52nd Precinct from Central Booking and the proper periodic prisoner visits are not document on the roster. (Schedule A Command Discipline issued)

Computer and Related Background Checks:

PEPR

PO Timothy Burke

Tax # 954584

Shield # 17244

Cmd. 52 Precinct

Appt. Date: 07/09/2013

Not Sick/Not Chronic

Arrest History: 120, Felonies 33, Misdemeanors 87,

LVL 2 Discipline 11/19/15-05/19/17 - Charges and Specs

LVL Sus Suspended 09/15/15-10/19/15 - Suspension/Modified Assignment

ICMS

12/28/2017, 17-51460, Use of Force Level 2, (Current Case)

11/30/2017, OG-2017-24603, Invoice Discrepancy - Bank Drop,

07/25/2017, F-2017-2206, Threats Against MOS

06/18/2017, OG-2017-011828, Invoice Discrepancy Lab - Marijuana,

05/12/2015, OG-2015-6952, Evidence Discrepancy Lab - Narcotics,

09/07/2014, M-2015-1915, Domestic Incident, OOP, Partially Substantiated.

Civilian complainant [REDACTED] alleged that [REDACTED] PO Timothy Burke threw a pillow at her while she was walking up the stairs causing her to fall and sustain a physical injury and also alleged that she was a victim of physical abuse in the past at the hands of PO Burke. In one past incident [REDACTED] alleges that PO Burke slammed her head into the window of a car. The disposition of this case is as follows.

Domestic Incident - Verbal/ NO OOP, Disposition: I&I

Domestic Incident - Verbal/ NO OOP, Disposition: Unsubstantiated

Suspended MOS Domestic - NON IAB, Disposition: I&I

Arrested MOS Domestic - NON IAB, Disposition: I&I

Firearms removal - Non Disciplinary-Domestic, Disposition: I&I

Domestic Incident-OOP-Firearms Removal, Disposition: I&I

Fail to Notify IAB, Disposition Substantiated

Domestic Incident-Verbal/NO OOP, Disposition Substantiated

Fail to Notify IAB, Disposition Substantiated

Domestic-harassment, Disposition Substantiated

Charges and Specifications, Disposition: I&I

CPI

11/19/15, Performance Monitoring, Placed on Level 2 Discipline Monitoring

10/15/15, Modified After Suspension

09/17/15, Charges and Specs, Engaged in a Physical Altercation with his [REDACTED]

09/15/15, 15-27419, MOS Suspended, Domestic Dispute

09/07/15, M15-1915, Fail Substantiated, Domestic Incident - Substantiated

IAPRO

Nothing to Report

CCRB

One (1) allegation which is the concurrent Investigation. into this case.

PEPR:

Rank/Name: Sergeant Aneudy Rosa

Tax: 931950

Shield: 3607

Cmd: 52nd Precinct

Appt. date: 07/22/02

Promotion Date: 07/28/17

Not sick/Not chronic

Full duty/Active

Arrest History: 190 Total - 25 Felonies, 157 Misdemeanors, 4 Violations, 4 Infractions

Three (3) total Monitoring records:

1. LVL Sus Suspended, Start Date 03/05/14 to End date 04/04/14 - Reason - Suspended/Modified Assignment

2. LVL 2 Discipline Start Date 05/07/14 to End Date 09/21/15 - Reason - Charges & Specs

3. LVL 3 Dismissal Probation Start Date 09/21/15 to 12/28/16 - Reason - Dismissal Probation

ICMS:

3 Report Inaccurate/Incomplete Incidents

OG2018-14527 - Substantiated - Interview with Sgt. Rosa who stated what was vouchered was the correct amount, however he also acknowledges that a miscount in USC could have been possible. Sgt. Rosa was verbally Warn and Admonished, and reminded of the importance of Vouching Property correctly.

OG2018-10436 - Substantiated - Sergeant Rosa did not ensure the decks of heroin were correctly counted causing a discrepancy of one over. The decks were packaged tightly and small in size making it hard to count correctly.

C2018-0012 - Current Investigation

CPI:

08/16/18 - OG18-16168 - Fail to Notify IAB in a timely manner - Substantiated

07/25/18 - OG18-14527 - Report Incomplete/Inaccurate & Invoice Discrepancy - Substantiated

05/29/18 - OG18-10436 - Report Incomplete/Inaccurate & Invoice Discrepancy - Substantiated

06/27/16 - Dept Vehicle Accident - At Fault

09/21/15 - Dismissal Probation

05/07/14 - Performance Monitoring - Level 2 Discipline Monitoring

04/04/14 - Modified After Suspension

03/06/14 - Charges & Specifications - Possessed Anabolic Steroids

03/05/14 - MOS Suspended

09/14/08 - M08-2331 - Fail to take/make report - Unsub

11/12/04 - C04-0883 - Missing Property from Premise - Unfounded

IAPRO:

No allegations of Report Inaccurate/Incomplete

CCRB: Total of 3 cases

01/05/05 - 200500152 - Abuse - Refusal to Provide shield - C/V Uncooperative

02/02/07 - 200701678 - Abuse - Threat to damage/seize property - Exonerated

08/23/15 - 201507358 - Force - Other blunt Instrument - Unsub - Discourtesy Word - Unsub - Abuse - Threat of force - Unsub.

Conferrals Conducted:

>Beverly Walker of the Comptrollers Office was conferred with on March 19, 2019 and she stated that there was no Notice of Claim submitted by the complainant [REDACTED]

>CCRB #201800208 has been administratively closed as of 02/28/18 due to the inability to contact the complainant, [REDACTED]

>Bronx District Attorneys Office- ADA Wiczynski stated that when PO Burke was drawing up the affidavit at the ADA Office he did get angry [REDACTED]. PO

Burke then stated in sum and substance to the Bronx ADA, next time I will just put him in a coma, It's the only way I will get justice.

Proactive Measures:

There were no SAE/SWE operations performed pursuant to this investigation.

IAB INTEL Results -

>January 2, 2018 agent stated that he/she is vaguely familiar with the S/O PO Burke and has no further information at this time.

>February 6, 2018 agent stated that PO Burke used to be known as a hot head, but since his domestic violence incident he has calmed down. PO Burke helps other MOS in the command. PO Burke handles his jobs and gets along well with others in the command. In regards to the allegation the agent stated that the C/V was in the cells yelling and screaming. Other prisoners in the cells with him started complaining and were upset by the complainants behavior. The S/O along with two (2) other MOS asked the C/V to exit the cell. C/V refused and the S/O entered the cell in an attempt to remove the C/V and the C/V attacked the S/O by grabbing him by the throat and began punching him. S/O and other MOS got the C/V out of the cell and got him in a cell by himself. At that point the C/V started to bang his head against the wall. A bus was called for both the S/O and the C/V and they were removed to separate Hospitals.

Other Information of Investigative Value:

Lodging timeline for [REDACTED]

12/28/17

0900 hours - Arrived at Bronx Central Booking

1025 hours - Transported to Lincoln Hospital ER

12/29/17

0848 hours - Jacoby Hospital ER

Patrol Guide 206-13 Hearings:

Police Officer Kevin Hickey was interviewed as a witness officer on May 2, 2018. PO Hickey stated that on December 28, 2017 he was working on the 3rd Platoon, assigned as the cell attendant, in uniform. PO Hickey stated that at approximately 1600 hours, he was present in the 52nd precinct cells where the complainant, [REDACTED] entered and was lodged in the cells by unknown Officers. PO Hickey stated that [REDACTED] immediately started to "shadow box" and had a (Spanish) verbal aggressive argument with another prisoner. PO Hickey stated that he told the Desk Officer, Sgt. Rosa what was transpiring and Sgt. Rosa agreed to put [REDACTED] in a single cell, isolated from other prisoners. PO Hickey stated that he and PO Burke entered the cell area (PO Scott was present as well). PO Hickey stated PO Burke escorted [REDACTED] out of the cells and began speaking to him stating, "Grab your stuff". PO Hickey stated [REDACTED] started to yell (unable to remember what) and then he observed [REDACTED] punch PO Burke in the throat/chin area.

PO Hickey stated PO Burke then struck [REDACTED] an unknown amount of times in the upper torso area. PO Hickey stated [REDACTED] was still flailing his arms and actively resisting. Additional Officers arrived to take [REDACTED] into custody. PO Hickey stated that he only grabbed [REDACTED] on his left bicep area and was unable to take him to the ground. PO Hickey stated other unidentified Officers took over and he was not involved in the handcuffing process.

PO Hickey stated that he did not observe any injuries on [REDACTED] when he was removed from the cells however after he was handcuffed, PO Hickey did notice some swelling and bruising on [REDACTED]'s face area.

Police Officer Christina Moncion was interviewed as a witness officer on February 9, 2018. PO Moncion stated that on December 28, 2017 she had an arrest at 1600 hours of prisoner [REDACTED]. PO Moncion was shown a photo of [REDACTED] and PO Moncion stated that she never had any contact with [REDACTED] and was assigned the arrest of [REDACTED] by Sgt. Rosa. PO Moncion stated that she was informed by PO Burke in the Special Ops Office regarding that [REDACTED] lunged at PO Burke's neck after he was trying to move [REDACTED] from one cell to another. PO Moncion stated that she was not informed by PO Burke how [REDACTED] was brought to the ground and PO Burke did not state that he struck [REDACTED] at any time to PO Moncion. Affidavit was shown of the arrest of [REDACTED] and PO Moncion stated that she indeed did sign the document.

PO Moncion was read the following details from the Affidavit on the arrest of [REDACTED] for Assault2 on a Police Officer: PO Moncion as informed by PO Timothy Burke that the informant attempted to transfer the defendant between holding cells, the defendant lunged towards him, struck the informant about the right side of the mouth twice with a closed fist. PO Moncion stated PO Burke did in fact inform her of these facts. The affidavit is continued to be read to PO Moncion which stated PO Moncion is further informed that the defendant placed his hands around the informant's throat and began to squeeze. PO Moncion reiterated that this in fact is what PO Burke said to her. The affidavit reading continued: Conduct caused informant to suffer substantial pain and soreness to his mouth, substantial pain and swelling to his hands and a twisted right ankle. Again, PO Moncion concurred that PO Burke informed her of these details. PO Moncion stated that she did not see any injuries on PO Burke however stated his mouth was tender.

After a break, PO Moncion wanted to make clarifying statements in which all that was told to her is that the perp lunged towards PO Burke. PO Moncion stated that the ADA spoke to PO Burke directly and PO Moncion did not speak to the ADA and subsequently prepared the Affidavit. PO Moncion then read the entire Affidavit and reiterated that it was accurate.

PO Moncion stated that she did not see any injuries on PO Burke, did not take any photos of his injuries and never supplied pictures to the ADA. PO Moncion stated that the conversation between her and PO Burke lasted approximately five (5) minutes. PO Moncion stated that she did not fingerprint [REDACTED] and was never in his presence. PO Moncion stated that she did not go down to court regarding this incident at the time of this PG Hearing. PO Moncion stated that no other Officers gave her their account of what transpired and the only information she received was from PO Burke. PO Moncion stated that she never conferred with the DA and only provided the DA the phone number of PO Burke. PO Moncion stated that the affidavit was an accurate account of what PO Burke informed her regarding what transpired.

Police Officer Rueben Santos was interviewed as a witness officer on February 12, 2018. PO Santos stated that on December 28, 2017 he was assigned to the 52 Squad and working in business attire. PO Santos stated that he had an arrest of [REDACTED] and that is why he was in the precinct. PO Santos stated that at approximately 1600 hours he noticed that [REDACTED] was acting angry and mad. PO Santos stated that he was printing his prisoner in the cells when he noticed [REDACTED] removed from the cells and saw that he was being aggressive and overheard [REDACTED] state, "Fuck you nigger" and punch PO Burke in the neck/chin area. PO Santos stated that PO Burke began throwing an unknown amount of punches (more than 3) to the face of [REDACTED] as [REDACTED] was holding onto PO Burke's neck area. PO Santos stated that he then tried to subdue [REDACTED]'s arm and place it behind his back so he could be handcuffed. PO Santos stated that he did not try to pull PO Burke off [REDACTED] who was very strong. PO Santos stated that [REDACTED] was taken to the ground and handcuffed. PO Santos stated that when additional Officers arrived, that is when [REDACTED] was brought to the ground. PO Santos stated that [REDACTED] had blood on his lip after the incident and was unaware of PO Burke's injuries.

Sergeant Aneudy Rosa was interviewed as a witness officer on February 12, 2018. Sgt. Rosa stated that on December 28, 2017

he was assigned as the Desk Officer. Sgt. Rosa stated that [REDACTED] was brought back to the precinct (from Central Booking) while he was signing onto the desk. Sgt. Rosa stated that he informed that [REDACTED] was fighting with other prisoners at Central Booking. Sgt. Rosa stated that [REDACTED] was placed into the cells and began doing "push ups" and "Shadow boxing" in the cells as Sgt. Rosa was viewing the surveillance cameras. Sgt. Rosa stated that he told the cell attendant (PO Hickey) to remove [REDACTED] into a separate cell because of his actions. Sgt. Rosa stated that PO Burke was by the desk area as well and volunteered to "take care of it". Sgt. Rosa stated that PO Burke was driving Lt. Maloney on the 3rd Platoon.

Sgt. Rosa stated that he continued to view the cameras and saw PO Burke and [REDACTED] "square off" and Sgt. Rosa told PO Savastano (who was obtaining a memo book) to assist PO Burke with the extraction of [REDACTED] to a separate cell. Sgt. Rosa stated that he then looked up at the camera and observed 2-3 punches being thrown by PO Burke as [REDACTED] was holding onto PO Burke's neck/shirt area. Sgt. Rosa stated that he ran to the cells and asked an unidentified UMOS to obtain the Taser. Sgt. Rosa stated that when he arrived in the cell area he witnessed Officers handcuffing [REDACTED] and did not see any Officers using force besides handcuffing [REDACTED]. Sgt. Rosa stated that [REDACTED] was removed to a cell area and he does not recall where PO Burke went within the precinct. Sgt. Rosa stated that he noticed [REDACTED] had a swollen cheek area after the incident. Sgt. Rosa stated that [REDACTED] wanted to go to the hospital because he stated, "This white boy beat me up" and was "hurting". Sgt. Rosa stated that he does not recall how he called for an ambulance and does not recall what time the ambulance arrived nor does he recall what Hospital [REDACTED] went to.

Sgt. Rosa stated that PO Burke stated that [REDACTED] struck him one time and that is when PO Burke "reacted" and [REDACTED] was still holding onto his neck area and continued to punch. Sgt. Rosa was shown the prisoner roster for 12/28/17. Sgt. Rosa stated that [REDACTED] was not documented on the prisoner roster and acknowledged that there were no entries for the tour for almost every prisoner.

Police Officer Timothy Burke was interviewed as a subject officer on June 12, 2018. PO Burke stated that on December 28, 2017 he was working the third platoon assigned as Lt. Maloney's operator and working in uniform. At 1600 hours PO Burke was inside the 52nd Precinct station awaiting Lt. Maloney. PO Burke stated he has never come into contact with prisoner [REDACTED] before December 28, 2018. PO Hickey the cell attendant came to the desk and stated a prisoner in the cells is being disruptive and starting fights with other prisoners. The Desk Officer Sgt. Rosa directed PO Burke to remove [REDACTED] to another cell. When PO Burke first saw [REDACTED] he was acting calm and PO Burke stated "Sir please come with me, I'm going to remove you to another cell by yourself." [REDACTED] stated back "That's my fucking jacket nigger." PO Burke responded that he will search the jacket then bring it to him afterwards. At this time PO Scott and PO Hickey were standing in the doorway and PO Santos was fingerprinting his perp. When PO Burke went to escort [REDACTED] to the doorway [REDACTED] did a swim arm move with his right arm and his left arm swung towards PO Burke's face and connected with his chin then grabbed PO Burke by his neck. PO Burke then defended himself by throwing punches. [REDACTED] grabbed onto PO Burke and was unable to break free and punched [REDACTED] approximately seven (7) times. As [REDACTED] held onto PO Burke they went backwards and his first couple of hand strikes were not effective in getting free of [REDACTED]'s grasp. PO Burke stated he didn't know [REDACTED] or why he was in the cells or what he was capable of and he wasn't hand cuffed. When officers came to PO Burke's assistance [REDACTED] delivered another punch to PO Burke's chin right before PO Burke's last punch.

PO Burke felt that his nine (9) punches were appropriate given the circumstances. PO Burke described the circumstances not being familiar with [REDACTED], the fact that he was struck by him once already then he choked him and was shadow boxing in the cell and almost hit another prisoner. PO Burke when he was grabbed by his throat doesn't remember having trouble breathing and when [REDACTED] is brought to the ground it concludes. PO Burke stated that no kicks, or strikes were used after [REDACTED] was brought to the ground and he backed away because he sprained his ankle in which PO Burke went to North Central Bronx Hospital to seek treatment. PO Burke also stated that he had pain to his chin from being punched by [REDACTED].

PO Burke was shown the side video and stated at the seven (7) second mark you see PO Hickey in the doorway. PO Burke then pointed out when [REDACTED] swung his hand up pushing PO Burke's hand away then at the 19 second mark is where [REDACTED] struck PO Burke in the face with his left hand. PO Burke stated that until he was free of [REDACTED]'s grasp and the threat is done he feels his strikes were necessary.

PO Burke was then shown the front angle video and PO Burke stated at approximately the 35 second mark is where he was punched by [REDACTED] for the second time and the purpose of PO Burke's last strike was because of the strike he just received from [REDACTED]. PO Burke stated even with the Officers present he felt the punch was necessary because of being punched and felt the other officer's assistance wasn't effective. During the interaction PO Burke doesn't remember giving [REDACTED] any verbal commands.

PO Burke informed PO Moncion the arresting Officer that he was removing [REDACTED] to the back cell and he tried to break free and punched PO Burke in the face and grabbed his throat. PO Burke tried to eliminate what was going on and was punched in the face again. PO Burke was read the affidavit and asked if it was accurate. PO Burke stated in summation its accurate but "Play by play" the affidavit is not accurate. The PBA Attorney made a statement stating all the facts of the affidavit are true. When asked about the defendant having his hands around PO Burke's throat and squeezed PO Burke stated that is grammatically wrong because it's one hand. PO Burke stated that [REDACTED] grabbed his throat and shirt with his left hand. PO Burke stated that he did read the affidavit at the ADA's office and attested that the info was accurate. [REDACTED]

██████████. PO Savastano stated that the only force he witnessed was PO Burke striking ██████████ with his right fist and that is when ██████████ went down to the ground. PO Savastano stated that he came in at the end of the incident and does not know what transpired beforehand. PO Savastano stated that he did not interact or put hands on ██████████ at any time, only taking out his handcuffs. PO Savastano stated that he noticed that ██████████ was bleeding from an unknown area of the face.

Police Officer Christopher Montera was interviewed as a witness officer on February 12, 2018. PO Montera stated that his prisoner ██████████ was in the cells as he was doing paperwork. PO Montera stated that he was walking to the bathroom and saw PO Burke punching ██████████ in the face an unknown amount of times (3-5 times possibly) as he was walking into the door. PO Montera stated that he saw ██████████'s arm was moving up to PO Burke's mid-chest and went to grab his arm. PO Montera stated that when ██████████ went down to the ground, he held onto ██████████'s leg until he was leg shackled.

Supervisory Deficiencies:

Sgt Aneudy Rosa failed to maintain a record of all prisoners lodged in the holding cell and failed to enter the results of prisoners inspections on the prisoner roster. A schedule A Command Discipline was issued. The Command Discipline was adjudicated with a penalty of two (2) hours.

Conclusion:

This investigation disclosed that on Thursday, December 28, 2017, Sgt. Aneudy Rosa, Tax# 931950, 52nd Precinct, called the IAB Command Center to report that ██████████ sustained an injury ██████████. Medical Records disclosed that ██████████ sustained blunt trauma to his face and he was intoxicated. ██████████ reported that he was sitting in the precinct holding cell when he was taken out by a white police officer who started yelling at him, grabbed him by the neck and struck him three (3) times. The incident was caught on video and showed ██████████ in the holding cells doing pushups and shadow boxing while in the cells with another prisoner. ██████████ was removed from the cells by PO Burke and while being taken to another cell ██████████ didn't cooperate. ██████████ swung his arm up at PO Burke and PO Burke proceeded to punch ██████████ with a closed fist nine (9) times. Police Officer Timothy Burke used excessive force against ██████████ in that he wrongfully struck ██████████ multiple times. As such the allegation of Force Physical Force is Substantiated. Specification # 1. PO Timothy Burke intentionally made an official, false statement when Police Officer Burke filed a false and misleading, sworn affidavit with the Bronx District Attorney's Office. The incident was recorded on video and disputes the affidavit signed by PO Burke stating that the defendant lunged towards informant and struck informant about the right side of the mouth twice with a closed fist and that the defendant placed his hands around informants throat and began to squeeze. The allegation of Perjury Sworn Written Affidavit will be closed as Substantiated. Specification # 2. PO Timothy Burke engaged in conduct prejudicial to the good order, efficiency or discipline of the Department when he stated in sum and substance to a Bronx ADA known to the Department, "Next time I will just put him in a coma. It's the only way I will get justice." The allegation of Other Dept Rules/Procedures Violation will be closed as Substantiated. Specification # 3. PO Timothy Burke engaged in conduct prejudicial to the good order, efficiency or discipline of the Department when Police Officer Burke knowingly provided false statements to a Department employee knowing that said employee would rely on said statements to provide a sworn, official affidavit. PO Christina Moncion Tax # 954455 was assigned the arrest of ██████████ and was informed by PO Burke that the following transpired. As the informant attempted to transfer the defendant between holding cells, defendant lunged towards informant, and struck informant about the right side of the mouth twice with a closed fist. Deponent is further informed by informant, the defendant placed his hands around informants throat and began to squeeze. The incident was caught on video and the statements proved to be false and misleading. As such the allegation of Official Statement - False Statement - Other will be closed as Substantiated. Specification # 4.

This investigation also disclosed that on Thursday, December 28, 2017, Sgt. Aneudy Rosa, Tax# 931950, 52nd Precinct, was assigned as the Desk Officer when ██████████ was lodged in the ██████████. During the PG 206-13 hearing Sgt. Rosa was shown the prisoner roster for 12/28/17. Sgt. Rosa stated that ██████████ was not documented on the prisoner roster and acknowledged that the periodic visit section wasn't filled out properly. As such the allegation of Report Incomplete/Inaccurate - Other Report will be closed as Substantiated (Schedule A Command Discipline Issued with a penalty of two (2) hours)

This investigation has concluded and will be closed with an overall case disposition of Substantiated.

Subjects Involved

Name	Status	Sex	Race	Dob
931950 ANEUDY ROSA SGT (052-052 PRECINCT)	UNIFORM MEMBER OF SERVICE	MALE		██████████










Allegations

1	Full Allegation Report	Classification	Allegation Index	Allegation Date	Finding	Finding Date
	Incomplete/Inaccurate	Abuse of Dept Regulations	IMP-Invest. Incomp./Improper	02/12/2019	07 - Substantiated	02/12/2019

- Other Report					
Comments This investigation disclosed that on Thursday, December 28, 2017, Sgt. Aneudy Rosa, Tax# 931950, 52nd Precinct, was assigned as the Desk Officer when [REDACTED] was lodged in the [REDACTED]. During the PG 206-13 hearing Sgt. Rosa was shown the prisoner roster for 12/28/17. Sgt. Rosa stated that [REDACTED] was not documented on the prisoner roster and acknowledged that the periodic visit section wasn't filled out properly as such the allegation of Report Incomplete/Inaccurate - Other Report will be closed as Substantiated with an schedule A Command Discipline issued. Sgt Rosa's disciplinary action was a loss of two (2) hours.					
Name 954584 TIMOTHY BURKE POM (052-052 PRECINCT)	Status UNIFORM MEMBER OF SERVICE	Sex MALE	Race WHITE	Dob [REDACTED]	
Allegations					
1 Full Allegation Prisoner Incident - Injured in NYPD Custody - MOS Involved	Classification Arrest Effectuated	Allegation Index CI-Injured in Custody	Allegation Date 12/28/2017	Finding 04 - Info. and Intelligence	Finding Date 12/25/2018
Comments This investigation disclosed that on December 28, 2017, [REDACTED] sustained an injury [REDACTED]. Medical Records disclosed that [REDACTED] sustained blunt trauma to his face and he was intoxicated. [REDACTED] reported that he was sitting in the precinct holding cell when he was taken out by a white police officer who started yelling at him, grabbed him by the neck and struck him three (3) times. [REDACTED] was also involved in a dispute with another prisoner in the cells in which he was punched in the face and sustained injuries to his face. The allegation of Prisoner Injured- In NYPD Custody will be closed as Information and Intelligence.					
2 Full Allegation Use of Force - Level 2	Classification Arrest Effectuated	Allegation Index Force Investigation Notification	Allegation Date 12/28/2017	Finding 04 - Info. and Intelligence	Finding Date 12/27/2018
Comments This investigation disclosed that on December 28, 2017, based on the use of force investigative responsibilities and reporting guide this matter was investigated by the Internal Affairs Bureau as a Level 2 use of force due to the injuries sustained in connection with this incident. Medical Records disclosed that [REDACTED] sustained blunt trauma to his face and he was intoxicated. TRI Report# 2017-052-000228 was prepared by Sgt. Aneudy Rosa, Tax# 931950, in connection with this incident. The allegation of Use of Force- Level 3 will be closed as Information and Intelligence					
3 Full Allegation FADO Force - Physical Force	Classification Arrest Effectuated	Allegation Index O-Other	Allegation Date 01/05/2018	Finding 04 - Info. and Intelligence	Finding Date 12/27/2018
Comments The allegation of FADO Force - Physical Force was forwarded to CCRB and they conducted a concurrent investigation into this allegation under CCRB Case # 2018-00208. CCRB's case was Administratively Closed on February 2, 2018. The allegation of FADO Force - Physical Force will be closed as Information & Intelligence.					
4 Full Allegation Aided MOS - Injured - Result of Taking Police Action	Classification NOTIFICATION/Additional Information	Allegation Index ADD-Additional Information	Allegation Date 01/05/2018	Finding 04 - Info. and Intelligence	Finding Date 12/25/2018
Comments This investigation disclosed that on December 28, 2017, PO Timothy Burke, Tax# 954584 was involved in a physical altercation with the perpetrator [REDACTED] in the cell area of the 52nd Precinct when he rolled his ankle causing pain and swelling. PO Burke also alleged to have been punched in the face with a closed fist during this physical altercation causing pain and swelling. A Line of Duty report was prepared and assigned Medical Division Control # 6579. Supervisor's report of injury section stated that PO Burke while on duty was trying to remove a violent perpetrator from the cell area during a confrontation in which the perp did strike PO Burke in the face with a closed fist and wrestled him to the ground. During the altercation PO Burke did [REDACTED]. PO Burke was transported to North Central Bronx Hospital and diagnosed with [REDACTED].					

	The allegation of Aided MOS Injured Result of Taking Police Action will be closed as Information and Intelligence.				
5	Full Allegation Perjury - Sworn Written Affidavit	Classification Perjury/False Statements	Allegation Index COURT	Allegation Date 01/11/2018	Finding 07 - Substantiated Finding Date 12/25/2018
	Comments This Investigation disclosed that on December 2, 2018 PO Timothy Burke Tax# 954584, intentionally made an official, false statement; to wit: said Police Officer filed a false and misleading, sworn affidavit with the Bronx District Attorney's Office. The incident was recorded on video and disputes the affidavit signed by PO Burke stating that the defendant lunged towards informant and struck informant about the right side of the mouth twice with a closed fist. Deponent is further informed by informant, the defendant placed his hands around informant's throat and began to squeeze. The allegation of Perjury Sworn Written Affidavit will be closed as Substantiated. Spec # 2				
6	Full Allegation Charges & Specifications - IAB	Classification NOTIFICATION/Additional Information	Allegation Index CS-Charges and Specifications	Allegation Date 12/14/2018	Finding 04 - Info. and Intelligence Finding Date 12/25/2018
	Comments This investigation disclosed that on December 11, 2018, Charges & Specifications were preferred against PO Timothy Burke, Tax# 954584. The allegation of Charges & Specifications- IAB will be closed as Information and Intelligence				
7	Full Allegation Force - Physical Force	Classification Arrest Effected	Allegation Index O-Other	Allegation Date 12/25/2018	Finding 07 - Substantiated Finding Date 12/27/2018
	Comments This investigation disclosed that on Thursday, December 28, 2017, Sgt. Aneudy Rosa, Tax# 931950, 52nd Precinct, called the IAB Command Center to report that [REDACTED] sustained an injury [REDACTED]. Medical Records disclosed that [REDACTED] sustained blunt trauma to his face and he was intoxicated. [REDACTED] reported that he was sitting in the precinct holding cell when he was taken out by a white police officer who started yelling at him, grabbed him by the neck and struck him three (3) times. The incident was caught on video and showed [REDACTED] in the holding cells doing pushups and shadow boxing while in the cells with another prisoner. [REDACTED] was removed from the cells by PO Burke and while being taken to another cell [REDACTED] didn't cooperate. [REDACTED] swung his arm up at PO Burke and PO Burke proceeded to punch [REDACTED] with a closed fist nine (9) times. PO Burke did fail to utilize de-escalation techniques and apply the reasonable force necessary to subdue [REDACTED]. As such the allegation of Force Physical Force is Substantiated. Spec # 1				
8	Full Allegation Other Dept Rules/Procedures Violation -	Classification Abuse of Dept Regulations	Allegation Index VRP-Violation Rules/Procedures	Allegation Date 12/25/2018	Finding 07 - Substantiated Finding Date 12/25/2018
	Comments This Investigation disclosed that on December 28, 2017 PO Timothy Burke Tax# 954584, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer stated in sum and substance to a Bronx ADA known to the Department, "Next time I will just put him in a coma. It's the only way I will get justice." The allegation of Other Dept Rules/Procedures Violation will be closed as Substantiated. Spec # 3				
9	Full Allegation Official Statement - False Statement - Other	Classification Perjury/False Statements	Allegation Index O-Other False Statements	Allegation Date 12/25/2018	Finding 07 - Substantiated Finding Date 12/25/2018
	Comments This Investigation disclosed that on December 28, 2017 PO Timothy Burke Tax# 954584, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department to wit: said Police Officer knowingly provided false statements to a Department employee knowing that said employee would rely on said statements to provide a sworn, official affidavit. PO Christina Moncion Tax # 954455 was assigned [REDACTED] and was informed by PO Burke that the following transpired. As the informant attempted to transfer the defendant between holding cells, defendant lunged towards informant, and struck informant about the right side of the mouth twice with a closed fist. Deponent is further informed by informant, the defendant placed his hands around informants throat and began to squeeze. The incident was caught on video and the statements proved to be false and misleading. As such the allegation of Official Statement - False Statement - Other will be closed as				

ATTACHMENT

1		<u>'Amended Charges & Specs plus the 49 Request'</u>
2		<u>'Charges & Specs PO Burke & 49 Request'</u>
3		<u>'CCRB Disposition'</u>
4		<u>'Notice of Disposition to PO Burke & Sgt Rosa'</u>
5		<u>'Notice of Disposition to Complainant [REDACTED]'</u>
6		<u>'Original 49 request for Charges and Specs'</u>
7		<u>'Original 49 Request For Charges & Specs be Served'</u>
8		<u>'Sgt Rosa Schedule A Command Discipline'</u>
9		<u>'Signed Amended Charges and Specs and 49 request'</u>

Reporting Officer:	Rank LCD	Name ALFANO STEVEN	Tax Reg. No. 921911	Command G54-GROUP 54 - FORCE
Reviewing Supervisor:	Manner of Closing 5 - SUBSTANTIATED	Date Reviewed 04/04/2019	Date of Next Review	Name COOPER ALAN
Endorser:	Rank LCD	Name ALFANO STEVEN	Tax Reg. No. 921911	Command G54-GROUP 54 - FORCE
				DateTime Reviewed 03/14/2019 11:20
	Comments FORWARD FOR REVIEW			
Endorser:	Rank DI	Name PARENTE MICHAEL	Tax Reg. No. 905618	Command G54-GROUP 54 - FORCE
				DateTime Reviewed 03/14/2019 11:37
	Comments			

Supv. Tax No.
885434

Status
Approved

Status
Approved

	APPROVED. I CONCUR WITH THE OVERALL CASE DISPOSITION OF SUBSTANTIATED. A SUPERVISORY DEFICIENCY ON THE PART OF SGT. ROSA IS NOTED IN THIS CASE. SGT. ROSA FAILED TO MAINTAIN A RECORD OF ALL PRISONERS LODGED IN THE HOLDING CELL AND FAILED TO ENTER THE RESULTS OF PRISONER INSPECTIONS ON THE PRISONER ROSTER. A SCHEDULE "A" CD WAS ISSUED. THE CD WAS ADJUDICATED WITH A PENALTY OF 2 HOURS. THE TEAM LEADER TOOK OVER THE CASE INVESTIGATION WHEN SGT. REISER, THE ORIGINAL CASE INVESTIGATOR, TRANSFERRED TO THE CHIEF OF DEPARTMENT I&E IN MAY/2018. THE GROUP COMMANDING OFFICER ASSUMED THE ROLE OF TEAM LEADER AND IN LIEU OF DOCUMENTED TEAM LEADERS I PROVIDED DIRECTION THROUGHOUT THE CASE. IT SHOULD BE NOTED THAT WORKSHEET TRACKING # 2796934 (IAB INTEL RESULTS) IS ERRONEOUSLY ADDED TO THIS CASE. THE CASE INVESTIGATOR WAS INSTRUCTED ACCORDINGLY. CASE CLOSED AS SUBSTANTIATED.					
Endorser:	Rank INS	Name CORRADO DERRICK	Tax Reg. No. 897238	Command Z03-ZONE 3	DateTime Reviewed 03/15/2019 14:45	Status Rejected
	Comments SEE ZONE 3 REVIEW, ATTACH REVIEW TO CASE.					
Endorser:	Rank DI	Name PARENTE MICHAEL	Tax Reg. No. 905618	Command G54-GROUP 54 - FORCE	DateTime Reviewed 03/19/2019 16:50	Status Rejected
	Comments <div></div>					
Endorser:	Rank LCD	Name ALFANO STEVEN	Tax Reg. No. 921911	Command G54-GROUP 54 - FORCE	DateTime Reviewed 03/20/2019 10:49	Status Approved
	Comments ABOVE LISTED CHANGES HAVE BEEN MADE AND THE CASE IS READY FOR CLOSING.					
Endorser:	Rank DI	Name PARENTE MICHAEL	Tax Reg. No. 905618	Command G54-GROUP 54 - FORCE	DateTime Reviewed 03/20/2019 10:54	Status Approved
	Comments APPROVED. THE DIRECTIVES FROM THE ZONE 3 CO AND XO HAVE BEEN ADDRESSED. THIS CASE IS RESUBMITTED FOR CLOSING AS SUBSTANTIATED.					
Endorser:	Rank INS	Name MCGRATH THOMAS	Tax Reg. No. 905607	Command Z03-ZONE 3	DateTime Reviewed 03/25/2019 12:12	Status Approved
	Comments APPROVED					
Endorser:	Rank INS	Name CORRADO DERRICK	Tax Reg. No. 897238	Command Z03-ZONE 3	DateTime Reviewed 03/25/2019 12:38	Status Approved
	Comments APPROVE					
Endorser:	Rank DC	Name COOPER ALAN	Tax Reg. No. 885434	Command CRI-CRIMINAL INVESTIGATIONS	DateTime Reviewed 04/04/2019 19:18	Status Approved
	Comments CONCUR, CASE CLOSED.					